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# The Middle Ages without Feudalism

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Essays in Criticism and Comparison  
on the Medieval West

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*The articles in this volume, as in all others in the Variorum Collected Studies Series, have not been given a new, continuous pagination. In order to avoid confusion, and to facilitate their use where these same studies have been referred to elsewhere, the original pagination has been maintained wherever possible.*

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## PREFACE

The essays collected here were originally published after I had mounted my first attack on the concept of feudalism in *Fiefs and Vassals* (1994). They fall into three groups: the first continues and develops that attack, while the second and third look at various aspects of the middle ages (and some other bits of history) that seem to me to fit the evidence better and to offer more help in understanding medieval society.

*Fiefs and Vassals* received widely varying reviews. Some thought its purpose and my arguments wrong, one reviewer even accusing me of committing an offence against *wissenschaftlichen Redlichkeit*. Other reviews, some probably written by scholars who already had their own doubts about feudalism, were favourable, with one or two enthusiastic, while some historians who were doubtful at first later became more interested in my arguments, even if they disagreed with them or found omissions or mistakes in the book. *Fiefs and Vassals* certainly had both omissions and mistakes. Most complaints of omissions were about the absence of Spain, which I left out because trying to cover France, England, Germany, and Italy already stretched my knowledge too far. I have never filled in that particular gap but chapters I–VI here fill in some of the others. They include some repetitions, as it generally seemed necessary to explain my basic arguments before applying them to the particular areas or subjects. Chapters I and II here, together with the introduction to the second edition of *Kingdoms and Communities*,<sup>1</sup> say more about oaths of fidelity and the historiography of vassals and vassalage; III and IV discuss the kingdoms of Jerusalem and Scotland; V looks at the idea of the ‘feudal hierarchy’ or ‘feudal pyramid’, and VI discusses some of the best known interpretations of feudalism, with some attention to the whole vast subject of Marxist feudalism and relations between lords and peasants, which were almost entirely omitted from *Fiefs and Vassals*. The notes to chapter VI refer to a few works on feudalism outside Europe, though I still have not published anything about Spain, Scandinavia, or eastern Europe, and intend to leave the problems of feudalism in all these areas to younger scholars who know more about them.<sup>2</sup>

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<sup>1</sup> (Oxford, 1997; first published 1984).

<sup>2</sup> There are essays by others on Spanish, Scandinavian, and east European feudalism in *Feudalism: New Landscapes of Debate*, eds Sverre Bagge and others (Turnhout, 2011). The evidence cited for Hungary seems to me to support rather than ‘wholly to contradict’ some of my arguments.

As for mistakes, I know of two historians who have corrected important errors: Fredric L. Cheyette has shown that my suggestion that the first *fiefs de reprise* were recorded in early-twelfth-century Montpellier was wrong. I was able to correct this passage, along with some smaller points, in the Italian translation of my book that appeared in 2004. Since then Susan Wood has produced ample evidence of what I had rashly called the anachronistic concept of the ‘proprietary church system’.<sup>3</sup> Since I do not scour publishers’ catalogues or periodicals in English, let alone all those in other languages, for comments on my arguments, other important corrections may well have published.<sup>4</sup>

Most of the references to *Fiefs and Vassals* that I have found outside the reviews are brief, expressing general doubts or interest rather than engaging with the details of my arguments.<sup>5</sup> Thanks, however, to Brigitte Kasten, who has regularly and kindly told me about the work of German historians on the subject, I know that some of them have decided that my book was a wake-up call to reconsider *Lehnswesen*.<sup>6</sup> Kasten’s own evidence and arguments about the difference between early medieval benefices and *praecaria* and later *Lehen* must have contributed notably to the apparently general decision of German medievalists to postpone the development of *Lehnswesen* to the eleventh or twelfth century.<sup>7</sup> On the later period my arguments have met with more resistance. Among comments that have nevertheless encouraged me were remarks by Dominique Barthélemy and Ludolf Kuchenbuch on my call to

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<sup>3</sup> F.L. Cheyette, review in *Speculum* 71 (1996), 998–1006, and ‘On the fief de reprise,’ in *Les sociétés méridionales à l’âge féodal, Hommage à Pierre Bonnassie*, ed. Hélène Débax (Toulouse: CNRS: Université de Toulouse-Le Mirail, 1999), 319–24; Susan Wood, *The Proprietary Church in the Medieval West* (Oxford, 2006).

<sup>4</sup> Smaller corrections were made by Philippe Depreux, ‘Lehnrechtliche Symbolhandlung’ in *Das Lehnswesen im Hochmittelalter*, eds Jürgen Dendorfer and Roman Deutinger (Ostfildern, 2010), 387–99, to my discussion of Galbert of Bruges.

<sup>5</sup> There are only a few references to my arguments in *Il Feudalesimo nell’alto Medioevo* (*Settimane di Studio del Centro italiano di Studi sull’alto Medioevo* 47, 2000); *Die Gegenwart des Feudalismus*, eds N. Fryde, P. Monnet, and O.G. Oexle (Göttingen, 2002); or in most of the essays in *Feudalism: New Landscapes of Debate*.

<sup>6</sup> *Das Lehnswesen im Hochmittelalter*, eds J. Dendorfer and R. Deutinger (Ostfildern, 2010), here p. 463.

<sup>7</sup> Most recently, citing earlier articles, B. Kasten, ‘Das Lehnswesen - Fakt oder Fiktion’, in *Der frühmittelalterliche Staat - europäische Perspektiven*, eds Walter Pohl and others (Vienna, 2009), 331–53; ead., ‘Economic and political aspects of leases in the kingdom of the Franks during the eighth and ninth centuries: a contribution to the current debate on feudalism’, in *Feudalism: New Landscapes of Debate*, 27–55; *Das Lehnswesen im Hochmittelalter*, especially the introduction and conclusion. This seems to be accepted at textbook level: S. Patzold, *Das Lehnswesen* (Munich, 2012), 38–43.

distinguish words, concepts, and phenomena.<sup>8</sup> I was also pleased at Christian Zendri's notice (though not entire agreement) of my questioning of small points in Lehmann's edition of the *Libri Feudorum*. Lehmann was much too good an editor to have his work taken for granted without question.<sup>9</sup>

It has been gratifying to have my book welcomed as a wake-up call, and most encouraging both to have *Lehnswesen* dismissed from the early middle ages and to see it more closely studied in the twelfth century, as it has been in *Das Lehnswesen im Hochmittelalter*.<sup>10</sup> Jürgen Dendorfer and Roman Deutinger, the editors of this rich, learned, and thought-provoking volume, point out that German historians mean by *Lehnswesen* something less broad than what French or Anglophone medievalists mean by *féodalité* or non-Marxist feudalism.<sup>11</sup> That illustrates the problem created by different historiographical traditions in discussing what is often taken as a single phenomenon. It is difficult to know what individual German historians, who may well have been influenced by Bloch and others who see feudalism in a wider sense, include in *Lehnswesen* (or indeed in *Lehnrecht*<sup>12</sup>). Few historians say what rights and obligations they think were attached at any date to what they call *Lehen*, fiefs, or what are generally taken to be equivalents in their own languages. Some of the contributors to *Das Lehnswesen* seem to envisage the terminology and rules of *Lehnrecht* as having been more fixed in the twelfth century than I suspect they were, either in Germany or elsewhere. The idea of feudalism – or *Lehnswesen* – is based on such a mixture of evidence and ideas from different European countries and dates that it is hard to evaluate the evidence from any one area without comparison with others.

Leaving words aside, I would love to know what scholars who know the sources much better than I do think about what I thought were new arguments in twelfth-century Germany about what the records that I cited called benefices

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<sup>8</sup> D. Barthélemy, 'La théorie féodale à l'épreuve de l'anthropologie (note critique)', *Annales HSS* 52 (1997), 321–41, at 321, n. 1; L. Kuchenbuch, 'Versuch über die Gebrauchsstrategien eines Reizwortes', in *Die Gegenwart des Feudalismus*, 293–328, at 305.

<sup>9</sup> C. Zendri, 'Elementi canonistici nella "Compilatio Antiqua" dei "libri Feudorum"', in *Gli inizi del diritto pubblico: l'età di Federico Barbarossa: legislazione e scienza del diritto*, eds G. Dilcher and D. Quagliani, 231–53, at 240, 242n.

<sup>10</sup> The next paragraphs repeat, with some changes, some of what I said in 'Fiefs and vassals after twelve years', in *Feudalism: New Landscapes of Debate*, 15–26.

<sup>11</sup> *Das Lehnswesen im Hochmittelalter* 19, 472. On meanings of feudalism: E.A.R. Brown, 'The tyranny of a construct: feudalism and historians of medieval Europe', *American Historical Review* 79 (1974), 1063–88; Reynolds, 'The use of feudalism in comparative history' in *Explorations in Comparative History*, ed. B.Z. Kedar (Jerusalem: Hebrew University Magnes Press, 2009), 191–217.

<sup>12</sup> Cf. Otto Brunner, 'Feudalismus, feudal' in *Geschichtliche Grundbegriffe*, ed. O. Brunner and others, 2 (1975), 337–50, at 337.

and their rights. Was I right to detect hints of increasing professionalization of law in those records and then in the *Sachsenspiegel*, which may have been only partly influenced by the new academic law from Italy? In the same way, I should also welcome judgements from historians of Italy before 1100 on, for instance, my doubts about interpretations of the ordinance of 1037 and of other records from before the twelfth century that have generally been seen as foreshadowing the 'feudal law' of the later middle ages. Historians of France, too, might consider my questioning of Duby's arguments about the eleventh-century Mâconnais, which apparently only Cheyette's review noticed, and maybe also what I suggested about the so-called 'feudal aids' there. Historians of England might consider my suggestions about the importance of the arrangement of Domesday Book in creating the idea of a hierarchy of property rights, about seigniorial jurisdiction in the early twelfth century, or about Innocent III's possible contribution to Magna Carta clause 39. If I am wrong about any or all of these points, then showing that I am would advance knowledge.

Dendorfer has suggested that students of *Lehnswesen* should study the terminology of *Lehen* and *Vasallität* in their sources.<sup>13</sup> I would go further and ask medieval historians to restrict their own use of the words 'vassal' and 'fief' (or *Lehn/Lehen, feudo* etc.) to times when any forms of the words are used in the sources. Both words carry connotations that may imply, or allow readers to infer, assumptions about political and social relationships that, I suggest, need to be questioned, and then either confirmed or abandoned, rather than assumed. When, for instance, historians refer to those who witnessed a lord's charter in eleventh-century France as the vassals of that lord even when the word is not used in the charter, what do they think the word would have meant in that context if it had been used? Is the historian using it in the Carolingian sense (a lay servant with military and governmental duties); in the vernacular French sense of the *chansons de geste* (a soldier or valiant man, with no implication of relationship or service); in the later legal sense derived from the *Libri Feudorum* (the holder of a fief under that lord); or in the wider sense developed by nineteenth-century post-Romantic historians (a fief-holder bound to his lord by the strongest bond of medieval society)?<sup>14</sup> Historians who use the word when it is not in the source risk creating two troubles for their readers. First, a reader may assume that the word is in the source. Second, if it is not in the source, it implies that the historians using it are so sure that vassalage (whatever it meant) was such a strong and universal bond in medieval society that they can read it into sources that do not refer to it. A further problem arises

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<sup>13</sup> *Das Lehnswesen im Hochmittelalter*, 26.

<sup>14</sup> See below, chapter I, pp. 3–4.

when the word in the source is *vavassor* (or *valvassor* etc.), as in Conrad II's ordinance of 1037. Did it then so obviously meant either 'vassal' or 'vassal of a vassal' (whatever 'vassal' would have meant in that context then) that we can use 'vassal' when referring to the ordinance?<sup>15</sup> Similar questions are raised by referring to nobles' lands as fiefs or *Lehen* when they are not called fiefs or benefices in the sources, and then by assuming, when they are so described, that both words implied more or less the same rights and obligations everywhere and at any time. The use of all these words by many medieval historians invites the question whether feudalism exists rather in twentieth- or twenty-first-century minds than in eleventh- and twelfth-century society.

Some Anglophone medievalists tell me that they no longer use the word 'feudalism'. Nevertheless, so long as they go on assuming, for instance, that noble lands were in general derived, or thought to be derived, from individual grants by kings or lords as on what are generally called 'conditional tenures', which typically made those who got the land subject to the jurisdiction of the grantor, and owing him military service, counsel and aid, then the historians who abjure the word are still cherishing the concept. Whether it is called feudalism (*féodalité*, *feudalesimo*), or *Lehnswesen*, or merely has the adjective 'feudal' attached to it, is unimportant. The concept is, in any case, extremely vague and variable – as E.A.R. Brown so cogently pointed out nearly forty years ago.<sup>16</sup>

The reason why it is so hard to agree about definitions becomes clear if one looks at the way that the composite framework of feudalism was gradually put together during the last three centuries. Eighteenth-century historians interested in analysing different kinds of society borrowed the word feudal from academic lawyers who had been interested in property that they thought had originated in grants from kings and lords. The historians then created a composite picture of feudal society based on the ideas they had of the histories of the kingdoms of France and England. France supplied the more or less independent jurisdictions that nobles still retained over the lands which had once been granted in the way that the academic lawyers had described, while the Norman Conquest of England supplied what seemed obvious and incontrovertible evidence both of all property rights originating in royal grants and of the creation of a hierarchy of property. Historians of other areas then either interpreted their own sources (or filled in gaps in them) to fit the framework or maintained that their areas

<sup>15</sup> *Fiefs and Vassals*, 23, where n. 4 should have referred to the use of *vasallus* by Obertus and the Vulgate *Libri Feudorum* where, respectively Lothar III and Conrad had *milites* (*Langobardische Lehnrecht*, ed. Lehmann, *Consuetudines*, pp. 148 (*Antiqua*, X. 2), 163–4). The authors of the *Libri* may have been the first to make the words synonymous?

<sup>16</sup> Brown, 'Tyranny'; cf. Deutinger in *Das Lehnswesen des Hochmittelalter*, 472–3.



did not fit and were therefore either not feudal or had their own special versions of feudalism. Closer examination suggests that a good deal of what we now know about the two areas for which the framework was originally devised does not fit either of them very well. Envisaging it, with all its elaborations, as a Weberian ideal type that need not fit exactly is not good enough if the supposed ideal type is a mere bundle of characteristics that do not seem to belong together in any coherent way, especially if the evidence anywhere for some of them is weak.

However many mistakes and misunderstandings there are in *Fiefs and Vassals*, however overstated its arguments may be, and however flawed its use of evidence, I still maintain that the non-Marxist idea of feudalism has produced a distorted view of the middle ages. Its concentration on the upper classes, largely ignoring at least nine-tenths of the population, distorts even the view of the upper classes themselves by making the line between them and the rest too hard. Its concentration on dyadic, interpersonal relations, and especially on vertical relations between lords and their noble followers, has distracted attention from the strong collectivist ideas that informed medieval secular society and politics, the emphasis on government by consultation and consensus, on collective judgements, and the belief in natural, given units of society and politics bound together by descent, law, and customs.

To those who have rightly pointed out that *Fiefs and Vassals* was a very negative book and have asked where I want us to go from there, my response might therefore be to suggest looking harder at the kind of collective ideas and activity that I first tried to sketch – over almost as rash a range of territory and evidence as in *Fiefs and Vassals* – in *Kingdoms and Communities*. That does not mean replacing feudalism by any other single label to stick on all the various societies of the European middle ages, whether one that emphasizes consultation and collective action or anything else. Single labels are not very helpful even in studying single societies. Any label to suit all the various societies of the European middle ages which have been described as feudal in non-Marxist usage, would be even less use.

I nevertheless think that collective values and activities in medieval government and law deserve more attention. By calling government collective I do not mean that it was egalitarian or democratic, let alone harmonious. What it was meant to be was both just and hierarchical. Justice was closely connected with custom, so that law and custom underlay – or were supposed to underlie – all government. Those who declared what was customary were men of higher status in whatever community, whether local or wider, and were therefore meant to represent it and speak for it. Like those in power in other societies, they sometimes, or often, acted to protect their own interests, but in their case the widespread, if not universal, acceptance of hierarchy meant that

they probably needed to do that less deliberately or corruptly than would have been needed in a society that did not take inequality for granted.

Given the difference between ideas and practice then and now, it seems important to try to understand how medieval law, and especially customary law, was supposed to work and how it worked in practice. Chapters VII and VIII here therefore deal with law and the way that the customary law of the earlier middle ages was changed by the development of professional law. The later chapters, apart from chapters XV and XVII, which range more widely, deal with various aspects of medieval societies and politics in western Europe and try to disentangle the assumptions or beliefs that they seem to have embodied from those sometimes attributed to them by later historians. All the chapters, I hope, reflect my effort, however incompletely achieved, to look at my own beliefs and assumptions, and my use of words, so as to distinguish my ideas as far as I can from those I think I can attribute to people in the past.

I am grateful to all the publishers and editors who have given me permission to produce the articles or chapters they originally published. Brepols has allowed me to use part of a chapter I contributed to *Feudalism: New Landscapes of Debate*, edited by Sverre Bagge and others (Turnhout:Brepols, 2011) as part of this preface. The others are listed in the Acknowledgements section.

I also owe thanks to John Smedley of Ashgate for advice on putting this collection together, to Lindsay Farthing for her care in carrying out the work, and, above all, to Brigitte Kasten for sympathy and support about feudalism over eighteen years.

I have made corrections to some of the texts published earlier and have added some afterthoughts at the end of some of them. Most of the afterthoughts refer to work published after mine but some note earlier publications that I had missed. Since a good deal has been written, especially on some of the subjects in the third section, I have mentioned only what seems to me particularly relevant to what I have said.

SUSAN REYNOLDS

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# I

## Afterthoughts on *Fiefs and Vassals*

In *Fiefs and Vassals*<sup>1</sup> I argued that neither the relationship that medieval historians call vassalage nor the kind of property that they call fiefs took their shape from the warrior society of the earlier Middle Ages. So far as I can see, they owed it to the more bureaucratic governments and estate administrations that developed from the twelfth century on and to the arguments of the professional and academic lawyers who appeared alongside. In so far as some of the obligations and terminology that historians associate with fiefs are to be found in earlier sources they are found chiefly in documents that record the relations of great churches with their tenants. This may be partly because so much of our information about the earlier period comes from records preserved by churches, but we should at least consider the implications of using the relations of bishops or abbots with their tenants as evidence of relations between kings and lay nobles or between the nobles and their own followers. They were surely different. Although we have less evidence about the property of laymen, apart from what they held as tenants of churches, we have enough to show that their rights do not seem to have generally conformed to the feudal pattern, while such evidence as we have of political relations suggests that they were not based exclusively on individual, interpersonal bonds. Nobles and free men, I maintain, who owed military service before the twelfth century did not do so because of the grant—or even the supposed grant—of anything like fiefs to them or their ancestors. However they had acquired their lands, they normally held them with as full, permanent, and independent rights as their society knew. Whatever service they owed, they normally owed it, not because they were vassals or tenants of a lord, but because they were subjects of someone more like a ruler. They owed it as property-owners, normally in rough proportion to their status and wealth. The word vassal was much less widely used in earlier medieval texts than in modern works on medieval history and when it was used it is not clear that it carried the connotations that now attach to the idea of vassalage.

The idea that the relations of vassalage and fiefholding were central to early medieval politics can be traced back to academic lawyers and historians in the sixteenth century. It has been developed and extended ever since without serious

<sup>1</sup> (Oxford, 1994).

revision. As a result medieval historians have come to take fiefs and vassalage so much for granted that they have barely worried about the confusion of words, concepts, and phenomena that seems to be involved in most discussions of medieval political ideas and forms of property. Feudalism, in its non-Marxist form of feudo-vassalic relations, has become a Kuhnian paradigm: evidence that cannot be made to fit into it becomes effectively invisible.

In my book I spent more time on fiefs than on vassalage because it seemed to me important to look for evidence of all the rights and obligations attached to property, rather than labelling it as a fief or alod on the basis either of words used in the texts or of one or two rights or obligations that are now considered typical of fiefs or alods even though neither word is used in the text. Searching through the uncertain evidence of the rights and obligations of property in different countries is not a particularly exciting form of research—and reading about it in my chapters 4–9 is not very exciting either, but it seems to throw up questions about the traditional history of feudo-vassalic relations that I suggested we need to address. Now, however, I want to concentrate on vassalage, on which I have some things to say that I did not say in the book. First of all I should like to make clear what I said there about it and what I did not say, or did not intend to say. My argument was that the interpersonal, dyadic relation between lord and vassal was not—could not ever have been—the main bond of society. It left out the vast mass of the population. Even within noble society men had families—parents and siblings, wives and children—and they had neighbours and presumably friends. In small, unbureaucratic societies most relations may be interpersonal in the sense that they are direct and unmediated through officials, but this, as we know from the work of social anthropologists, does not mean that there are not strong collective pressures and values too. In an earlier book I argued that, at least from 900 (and I now think I could have said the same for much earlier), medieval society was full of collective activity, behind which one can detect strong collective values.<sup>2</sup> The fact that the values are not explicitly stated and argued is, to my mind, a mark of their strength. They were just assumed, as the poet of the *Battle of Maldon* assumed them when he talked of the earl's readiness to die guarding this country, the land of Æthelred his king, *folc and foldan*—people and soil.<sup>3</sup> They were assumed when royal charters mentioned the counsel and consent of the king's great men, or when the custom of a kingdom or lesser unit of government, as stated by a representative group of its respectable members, was taken, as a matter of course, to have legal validity. What I did not say in either book was that vertical bonds in society were of no importance. Medieval society was authoritarian and hierarchical. Relations between rulers and their subjects, landlords and their tenants, employers and their servants, generals and their soldiers, were all extremely important. There was a lot of lordship about, of various kinds. But the

<sup>2</sup> *Kingdoms and Communities in Western Europe* (Oxford, 1984); a new edition, with a new introduction stressing political ideas, appeared in 1997.

<sup>3</sup> *English and Norse Documents relating to the Reign of Ethelred*, ed. M. Ashdown (Cambridge, 1930), 24.

kinds need to be distinguished. Some involved direct, unmediated interpersonal relations, like those of lords with their households and retainers, kings or princes with their trusted counsellors and courtiers. These relations were clearly important and shaped high politics. All I question is, first, whether they were the main bond of society as a whole, and second, how far relations between kings or lords and their noble followers in general were, even in origin, *essentially* interpersonal, affective, and dyadic, as the model of feudal vassalage implies.

There must be an element of truth in the idea that the bond of lordship was in the first place dyadic and that collective solidarities between those historians call vassals grew out of their common subjection,<sup>4</sup> but it is only part of the truth. Many subjects and tenants were committed to obedience or service by their parentage or geographical situation. However much a lord emphasized their duties to him, they lived in communities which must have been held together by a mass of close and affective, though not always harmonious, bonds. Besides, even when the members of a warband, for instance, came together solely through being recruited, it would be sociologically naïve to assume that their relations with each other remained in any significant sense secondary. The strongest, most affective relationship in the *Song of Roland* is not that between Roland and Charlemagne but that between Roland and Oliver.

But my real point is that there is no need to polarize interpersonal and collective relationships and values. Why could they not have coexisted in medieval Europe as they apparently do in so many other societies?

The idea of the supreme importance of the essentially interpersonal, affective, dyadic bonds between lord and vassal originated, so far as I can see, in the age of romanticism. Until the early nineteenth century those who wrote about feudal law and feudal society seem to have seen the feudal law as what I think it was—a system of property law. When they discussed its political and social implications they do not seem to have paid much attention to affective and interpersonal relations. What first drew attention to that aspect seems to have been the eighteenth-century discovery of medieval vernacular literature. Knights errant who protected the weak and confronted dangers as individuals fitted well with current political theories that focused on individuals with their own natural rights, apart from either society or the state and prior to both. They also fitted easily into the prevailing picture of French feudal anarchy while adding attractive colour and depth to it. Since the word vassal had been used in twelfth- and thirteenth-century French vernacular literature to mean a warrior or valiant man, generally without any relational implications,<sup>5</sup> eighteenth-century students of medieval chivalry often used it interchangeably with the word knight. The vassals of the feudal law

<sup>4</sup> Recently restated, for instance, by G. Althoff, *Verwandte, Freunde und Getreue* (Darmstadt, 1990), 213.

<sup>5</sup> T. Venckeleer, 'Faut-il traduire vassal par vassal?' in *Mélanges offerts à J. R. Smeets* (photog. typescript, Leiden, 1982), 303–16; works cited in Reynolds, *Fiefs and Vassals*, 22 n. This usage may go back some way: see Hincmar's reference to conversation *de vassaticis*: P.L. 126, col. 491.

thus became assimilated to the knights of chivalrous romance who fought nobly for their lords and sometimes died for them.

Early in the nineteenth century two historians, Hallam and Guizot, published works that quickly became influential and that described noble society in a social void that reflects the impressions conveyed by medieval epics and romances.<sup>6</sup> Both stressed the absence of collective bonds in medieval society, except in England. For both, however, England was a happy exception, while France was the norm. For Guizot, the essence of the feudal regime was the independence and isolation of individuals—that is, in effect, of seigniorial families in their castles. The only principle of association was the bond between suzerain and vassal. Where that was lacking there was no society with laws and obligations. The result for France was five centuries of chaos or anarchy, with lords exercising arbitrary and despotic power in their domains. When Guizot, like many others who wrote about feudal society after him, thought about society he assumed it was noble society. If commoners had any values or solidarities the gulf between them and the ‘feudal classes’ was so wide as to make them irrelevant.

The study of medieval literature greatly enriched medieval history and stimulated the study of social relations and values. But its impact was not entirely benign, because of the way it was used, not merely to depict ideas and values but to depict real social conditions. That was not surprising in the early nineteenth century, when few sources had been explored against which impressions gained from stories of courts, castles, and chivalry could be measured. As a result, medieval poetry was read at first in a way that almost ignored its creative and imaginative character. No *chanson de geste* or romance (not even the later, less individual-centred cycles) was intended to hold a mirror to everyday society as, for instance, George Eliot or Zola tried to do—and even they, like most writers of fiction, focused most closely on the individuals at the centre of their pictures. Epics and romances concentrated on individual heroes and villains, their exploits and adventures and loves, and the conflicts of loyalties that they could be imagined to face as individuals, untrammelled by any need either to explain the boring details and duties of everyday life or the social structures in which real people lived and which they took for granted.<sup>7</sup> However many of the audience of the poems were also judges and counsellors, judging was a different activity from enjoying a good story—an ‘invention contrived by art’.<sup>8</sup> Poets were not reporters, let alone law reporters. They told tales of fidelity betrayed or courage rewarded, and where the stories contained legal or quasi-legal conflicts, these were, as Steve

<sup>6</sup> H. Hallam, *View of the State of Europe during the Middle Ages* (London, 1818); F. P. C. Guizot, *Essais sur l'histoire de France* (Paris, 1823), amplified in *Cours d'histoire moderne: histoire de la civilisation en France depuis la chute de l'empire romain jusqu'en 1789* (Paris, 1829–32). I give fuller references in the introduction to the new edition of *Kingdoms and Communities* (Oxford, 1997).

<sup>7</sup> R. W. Hanning, *The Individual in Twelfth-Century Romance* (New Haven, CT, 1977), *passim*.

<sup>8</sup> The phrase is that of E. G. Stanley, ‘The date of Beowulf’, in *The Dating of Beowulf*, ed. C. Chase (Toronto, 1981), 197–211 at 201.

White argued in 1996, surely designed to pose eternally insoluble moral problems.<sup>9</sup> That made them interestingly different from the muddles of right and wrong and the tedious wrangles about custom that probably characterized most real disputes. Few medievalists now expect the literature to tell them about the norms that governed real life in quite the way they did in the early nineteenth century but they may still find themselves interpreting its stories by use of a model of feudal relations that comes from those early, naïve readings of the literature itself.<sup>10</sup> Quite apart from the dependence of the model on the mistranslation of a key word (*vassal*), the result is a closed circle of assumptions, the smooth circumference of which is almost impenetrable by evidence.

I propose now to offer two illustrations of questionable assumptions that seem to me to underlie a lot of the discourse of vassals and vassalage and that need to be looked at directly and critically so that we can either abandon them or turn them from assumptions into considered arguments. The first is the oath of fidelity that the emperor Charlemagne ordered his subjects to take in 802. It has been much discussed, especially in relation to the oaths taken to other lords—oaths of what historians call vassalage. The literature from before 1941 is well surveyed by Odegaard, whose conclusions seem to me eminently sensible.<sup>11</sup> But there is one aspect that he does not discuss.

One form of the 802 oath said that the swearer was to be faithful to Lord Charles, to his son King Pippin and his queen Bertha, and to his kingdom and his right, as by right a man ought to be to his lord ('*fidelis . . . sicut per drium debet esse homo domino suo*').<sup>12</sup> The point on which I want to focus is the assumption that the *sicut* clause shows that the oath to the king was constructed by analogy to the supposedly more familiar oaths taken to other, lesser lords. Despite Odegaard, whom they cite, Poly and Bournazel, for instance, say that the oath makes explicit reference to the situation of the vassal.<sup>13</sup> More recently, Althoff has made much

<sup>9</sup> S. D. White, 'Legal puzzles in Old French romances and epics: the case of Gawain v. Lancelot', unpublished plenary lecture read at Haskins Society conference, Houston, TX, Nov. 1996.

<sup>10</sup> As was pointed out by e.g. W. M. Hackett, 'La féodalité dans le *Chanson de Roland* et dans *Girart de Roussillon*', *IV<sup>e</sup> congrès international du Société Rencesvales*, *Studia Romanica*, 14 (Heidelberg, 1969), 22–7, and R. H. Bloch, *Medieval French Literature and Law* (Berkeley, CA, 1977), 7. Both scholars nevertheless took the package of feudo-vassalic relations as given. The problem faced by literary scholars trying to grapple with what historians say about fiefs and vassals is illustrated by Hackett and, more recently, by L. Paterson, *World of the Troubadours* (Cambridge, 1993), 19–36, 40–1, 68–70.

<sup>11</sup> C. E. Odegaard, 'Carolingian oaths', *Speculum*, xvi (1941), 284–96, though, as I suggested in *Fiefs and Vassals*, 88, his suggestion that general oaths had been discontinued before 789 is not very convincing.

<sup>12</sup> *Capitularia Regum Francorum*, ed. A. Boretius, M.G.H. Legum Sect. 2 (1883–1901), i, no. 34, pp. 101–2.

<sup>13</sup> J. P. Poly and E. Bournazel, *La mutation féodale: x<sup>e</sup>–xii<sup>e</sup> siècles* (Paris, 1980), 115. Their reference to Odegaard at 116 n. suggests that they may not have fully understood him: his references (pp. 289, 290, 292) to the inaptitude of Carolingian men for abstraction imply that he was not himself sure about it. Cf. e.g. F. L. Ganshof, 'Charlemagne et le serment', in *Mélanges d'histoire du moyen âge dédiés à la mémoire de L. Halphen* (Paris, 1951), 259–70; E. Magnou-Nortier, *Foi et fidélité*:



the same point.<sup>14</sup> Leaving aside the question of what a *vassus* or *vassallus* was at this time, and the nature of the bond between a Carolingian vassal and his lord, on which I find Odegaard entirely convincing,<sup>15</sup> I maintain that the wording—to be faithful as (*sicut*) a man should be to his lord does not necessarily imply that an analogy was being drawn to a *different* relationship. A man need not be a vassal and a *dominus* need not be a non-royal lord. Any superior from God down to a husband could be called *dominus*. Charlemagne himself was called *dominus* in this oath.<sup>16</sup> *Sicut* could have been used to illustrate and affirm the obligation by alluding to the category of which it is an example, rather than by reference to a different relationship. When Duke Tassilo of Bavaria commended himself in what a Frankish chronicler called vassalage to King Pippin and his sons in 757 he swore to be faithful as a vassal ought to be to his lords ('*sicut vassus dominos suos esse deberet*').<sup>17</sup> When the apostle Paul told Timothy to labour as a good soldier of Jesus Christ ('*labora sicut bonus miles Christi Jesu*') or wrote to the Ephesians: 'Be ye therefore followers of God as dear children' ('*Estote ergo imitatores Dei, sicut filii charissimi*'), the Vulgate text uses *sicut* to draw attention to the nature of the obligation he laid on them, not to other comparable obligations.<sup>18</sup> I might similarly say that I am trying to interest you as (*sicut*) a speaker ought to try to interest her audience.

I do not say that is what the 802 oath, and others that were copied from it, must have meant, but only that it may be. We should not just assume that the wording implies that people understood fidelity to a king or emperor by analogy to fidelity to a non-royal lord. They may have done. But it needs argument and argument needs evidence. Tassilo's oath and the Vulgate Bible both seem to me to provide evidence of usage that would have been familiar at the time. The Vulgate concordance that I used contains, of course, as well as the examples I have cited, many references to *sicut* being used to introduce an analogy to something different. But that is not the only use. It is unjustifiable to read *sicut* in the 802 oath in that sense without looking at other possibilities.

The oath also referred to being faithful to the king, his kingdom, and his right, while the royal officials were instructed to explain to those who were to take the

*recherches sur l'évolution des liens personnels chez les francs du viii<sup>e</sup> au ix<sup>e</sup> siècle* (Toulouse, 1976), 40, 55.

<sup>14</sup> Althoff, *Verwandte, Freunde und Getreue*, 139. He does not cite Odegaard.

<sup>15</sup> *Vassi and Fideles* (Cambridge, MA, 1955).

<sup>16</sup> The same applies to *senior*: see e.g. the oaths to kings as *seniores* in 851 and 877: *Capitularia*, nos. 205, 283, and Hincmar's oath to his king in *P.L.* 125, col. 1125 (and his reference to *principes et domini*, *ibid.* col. 1126).

<sup>17</sup> *Annales Regni Francorum*, ed. F. Kurze, M.G.H. *Scriptores rerum Germanicarum*, 6 (1895), 14–15: the printed text has *dominos suos*, though the editor notes that some MSS. have *domino suo*. For a similar use: Einhard, *Epistolae*, ed. K. Hampe, in *Epistolae Karolini Aevi*, iii, M.G.H. *Epistolae* (1899), ep. 26, pp. 122–3; B. Kasten, 'Aspekte des Lehnswesens in Einhards Briefen', in *Einhard: Studien zu Leben und Werk*, ed. H. Schefers (Darmstadt, 1997), 247–67: I am very grateful to Dr. Kasten for her help with Einhard.

<sup>18</sup> II Tim. 2.3; Eph. 5.1.

oath that the king could not look after them all individually but that he and they had to work together to protect the kingdom, maintain law and order, and so forth. Along with other evidence (discussed for instance by Nelson and Goetz),<sup>19</sup> this casts doubt on the assumption that collective relations and obligations were foreign to the period or came a poor second after the bond between lord and those whom historians call their vassals. You may object that much of the evidence of ideas of collectivity in this period comes from clerical writings and that laymen would not have understood or shared them, but the idea that a sense of the collective is intellectually difficult and foreign to simple illiterate societies does not seem to be borne out by studies of other societies. Margaret Thatcher's remark that there is no such thing as society was not the statement of the kind of unsophisticated values that are inarticulately held in simple peasant societies. It was a reflection of highly sophisticated arguments that have arisen in modern capitalist society.

It is only after thinking long and hard that I offer my second illustration of the danger of starting from assumptions about the primacy of feudo-vassalic relations and then fitting the evidence to the assumptions. That is because it involves criticizing an essay by a historian whose work I much admire. I prefer to attack ideas rather than individual works. But Jacques Le Goff is a great enough historian for me to feel less uncomfortable than if I were focusing on something by someone less distinguished. Even though I question the premises from which his essay on 'The symbolic ritual of vassalage' starts, I found it full of characteristically penetrating insights.<sup>20</sup> Le Goff's suggestions about the significance of symbolic acts and gestures, with the symbolic objects that go with them, are pure gold. Nevertheless I want to think harder and study more evidence about what we think they symbolize than Le Goff had done when he gave his paper over twenty years ago: he may well have done more on it since.

His essay starts from the unargued premise or assumption that what he calls vassalage was a fundamental social institution, which was inaugurated by a more or less standardized and normative rite consisting of three stages: homage, the oath of faith (or fidelity or fealty), and the investiture of the vassal with a fief. He suggests that these rituals and, by implication, the relationship they symbolized, remained essentially unchanged from the ninth century to some time around (I deduce) the thirteenth or fourteenth.<sup>21</sup> Tassilo's commendation of himself to Pippin in 757, Abbot Notker's oath to the emperor Otto I in 971, Galbert of Bruges's description of how William Clito was acknowledged as count of

<sup>19</sup> J. L. Nelson, 'Kingship and empire', in *Cambridge History of Medieval Political Thought*, ed. J. H. Burns (Cambridge, 1988), 211–51; H. W. Goetz, 'Regnum: zum politischen Denken der Karolingerzeit', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germ. Abt.* civ (1987), 110–89.

<sup>20</sup> 'Le rituel symbolique de la vassalité', *Settimane*, xxiii (1976), 679–775, reprinted in *Pour un autre moyen âge* (Paris, 1977), 349–420; trans. A. Goldhammer in *Time, Work and Culture in the Middle Ages* (Chicago, IL, 1980), 237–87, 354–67, to which I shall refer.

<sup>21</sup> 'Symbolic ritual', 240, 265.

Flanders in 1127, and the examples of *investitura* cited in Du Cange's dictionary—all represent, Le Goff says, substantially the same 'comprehensive *symbolic system*'.<sup>22</sup> I think that is wrong. Elements of the ritual—kneeling, touching hands, kissing, transferring a symbolic object—can indeed be found right through the Middle Ages and beyond, but the standardization of terminology and rituals, the rules about the different rituals and so on, belong to the period after the twelfth century when governments became more powerful and bureaucratic, when they kept records and insisted on following the forms they prescribed, and when, above all, there were legal experts to make the distinctions and argue about them. Le Goff's account of the ritual and the relationship that it symbolized seems to me to be drawn from nineteenth-century interpretations of these late medieval standardizations. The texts he cites seem to me to reveal not an essentially single, if developing, rite which symbolized a single, central relationship, but at least three kinds of rite that symbolized at least three different relationships. The most important texts, both in his argument and in mine, are Galbert of Bruges's account of the accession of William Clito and Du Cange's entry on *investitura*.

Galbert of Bruges tells how the count of Flanders was murdered in 1127, leaving no heir and a disputed inheritance.<sup>23</sup> The context is important. One of Galbert's purposes seems to have been to emphasize the solemn commitments to one of the claimants, William Clito, that were made by people who subsequently changed their minds. According to Galbert people symbolized their acceptance of William's authority by doing what Galbert called *hominium* and taking oaths of fidelity. The first to do so were apparently the citizens of Bruges, who made their commitment only after bargaining with their new count about their collective liberties. Homage was done next by those who had held what Galbert called *officia* and *feoda* under the last count and now received them again from the new one.<sup>24</sup> The next day more homages were done. This time Galbert does not say who was doing them, but it is now that he gives the description of the procedure that Le Goff cites.<sup>25</sup> First they did homage, putting their hands in the count's and then kissing him. Then they promised and swore faith. Then the count invested them all by the rod that he held in his hand.<sup>26</sup> It is this procedure that Le Goff and others see as paradigmatic.

What Galbert describes seems to be a ritual or combination of rituals symbolizing subordination or subjection, which is what *hominium* or *homagium*—being

<sup>22</sup> Ibid. 254.

<sup>23</sup> 'Symbolic ritual' cites Pirenne's edition of 1891 and the translation by J. B. Ross (New York, 1967). Galbert of Bruges, *De multro traditione et occisione gloriosi Karoli comitis Flandriarum*, ed. J. Rider (Turnhout, 1994) now has a better text than Pirenne's. I shall refer to chapter numbers, which are the same in all three.

<sup>24</sup> c. 55.

<sup>25</sup> c. 56.

<sup>26</sup> 'Deinde virgula, quam manu consul tenebat, investituras donavit eis omnibus qui hoc pacto securitatem et hominium simulque juramentum fecerant.'

or becoming someone's man—seems to have generally meant before arguments started about it. There are plenty of other cases when important people acknowledged a new ruler or submitted to their ruler after rebellion, and did so in a ritual that characteristically consisted of touching hands and swearing an oath to be faithful, probably on their knees. Less important people probably more often just took oaths, like those of 802, often, presumably, not in the presence of their ruler. In passing, we should remember that not all oaths of fidelity involved political submission. Some were sworn by people who were making peace or alliances with others, which illustrates the difficulty, as well as the importance, of trying to relate rituals to relationships.<sup>27</sup> Leaving that kind of oath aside, we can distinguish two fairly common forms of ritual submission—that which is done to the lord in person, generally holding his hands and sometimes kissing, with an oath, and that which consists only of an oath and is often done in his absence. Historians generally call the first homage and the second fidelity or fealty, but the words used in the sources vary: confusing words and phenomena makes it harder to distinguish the different phenomena. Neither ritual was necessarily accompanied by a grant of land, though being allowed to continue in possession of one's land might count as something of the sort. Many of those who Galbert says did homage and fealty to Count William did not hold their land as what lawyers would later call fiefs—notably, for instance, the citizens of Bruges and also the greater men of Flanders, who at this time surely held most of their lands as what historians call allods. Those whom William invested may have been the officeholders or fiefholders Galbert mentions, but perhaps everyone was invested as a sign that they held their lands (and lives) under the count's government. Meanwhile William's rival captured foreign merchants and made them give security, swear fidelity, and do homage to him, so that on that occasion *hominium* did not, for Galbert, even imply being a permanent resident and subject of the count.<sup>28</sup> Galbert lived before professional lawyers had begun to distinguish terms and give them technical legal meanings—or had reintroduced the word vassal, which he never uses, to mean fiefholder—and it does not make sense to use their distinctions retrospectively.

Du Cange's entry on *investitura* is about something quite different from the political recognition described by Galbert. Du Cange defines *investitura* as 'traditio, missio in possessionem', that is, a ritual for the transfer of property.<sup>29</sup> The examples he cites are all concerned with the transfer of symbolic objects, which he evidently took as the essence of the ritual of transfer. Only two or three of his examples, and those rather late, appear to be concerned with fiefholding, not because, as Le Goff suggested, Du Cange took *investitura* in 'too broad a

<sup>27</sup> Reynolds, *Fiefs and Vassals*, 127–8.

<sup>28</sup> c. 20: for *hominia* here see Rider's edition.

<sup>29</sup> Le Goff cites the 1678 edition of the *Glossarium mediae et infimae Latinitatis*, but his list of symbolic objects is closer to that of 1733–6, though not quite the same. The differences are not numerically significant, since, though later editions add more (and change the order in places), some of the entries in all editions are not of different objects but are mere cross-references.

sense',<sup>30</sup> but because neither the word *investitura* nor the transfer of symbolic objects was exclusively or even mainly related to the grant of fiefs. Most of Du Cange's examples record grants to churches, which, in most of the period covered, did not hold their property as what were then called fiefs. While bishops and abbots might have to do homage and take oaths of fidelity to the rulers of the areas in which their churches lay, they did not do it to others who gave property to their churches. The reason why, as Le Goff notes, the rituals often took place in churches and why the symbolic objects were put on altars is surely not that churches were 'neutral ground'<sup>31</sup> but that the gifts were made to them.

Free land carrying what were thought of as full rights was characteristically supposed to be transferred by a public ceremony which often involved the transfer of a symbolic object—what in English law would come to be called livery of seisin. In the earlier Middle Ages the verb *investire* or the noun *investitura* was sometimes used, especially in Italy, for this ritual. When free people received land from churches on more restricted terms the rites tended to follow those used for their other land though they might also have to do something to show that they acknowledged that the church retained its ultimate rights. That was likely to involve swearing and, depending on their status, maybe kneeling too. The use of the word investiture for this sort of transfer in Italy got it into the academic texts of feudal law so that historians of feudalism came to associate it especially with the grant of fiefs.<sup>32</sup> When governments became more bureaucratic rulers often tried to get more important property-owners to do homage, or take oaths, or both, either when they succeeded to property or when they acquired more. Their property was by now generally called fiefs, as it had not been earlier, so that these rituals of political acknowledgement or submission became associated with fiefholding in countries where the academic law of fiefs became influential. In England, where it did not, the submissive ritual of homage to the donor became connected with the transfer of military fiefs, though not all fiefs, but the normal transfer of property by what historians call 'subinfeudation', which made the donor or vendor the lord of the donee or purchaser, seems to be peculiar to England. In practice, there as elsewhere, the vital ritual in sales or gifts between subjects continued, I suggest, to be—not any ceremony of submission—but the transfer of a symbolic object from seller or giver to the new owner, whether the property was called a fief or not.

All this raises a question that I had never thought of until Le Goff directed my attention to these rituals. If, as I now suspect, the transfer of a symbolic object was characteristic primarily of transfers of full property, rather than of that in which the donor retained an interest as lord, perhaps there was no essential connection between homage to a lord and the transfer of an object. Consider the investitures

<sup>30</sup> 'Symbolic ritual', nn. 3, 25.

<sup>31</sup> Ibid. 275, 282–3.

<sup>32</sup> Hallam, *View of the State of Europe*, i. 126–7, for instance, like Le Goff, seems to have taken Du Cange's entry on investitures as concerned with fiefs.

described by Galbert. William invested his new subjects with a rod (*virgula*) that he held in his hand.<sup>33</sup> The rod was, I suspect, not a symbol, which the count handed over, of what was given, but of his authority, which he kept. It symbolized the relation of ruler and subject not that of grantor and recipient of land. I suggest therefore, though very tentatively, because the subject needs much more work on more sources, that, if the ritual transfer of an object is the essence of investiture, then investiture, far from forming an indissoluble unity with homage and fidelity,<sup>34</sup> is something quite separate from it. In practice, of course, investiture can mean investiture with a fief: words mean different things in different contexts and to different people. When it did, we need to investigate whether and when and where and how often it involved the transfer of an object.

Stimulated by Le Goff to think about the significance of gestures, I think there may be a third form of ritual—or a fourth if we separate ceremonies of submission to the lord in person from oaths taken in his absence. In practice these three or four forms are something like ideal types that varied and became combined in different circumstances. My third (or fourth) type is a ritual of appointment to office. Though, as we might expect, it varied according to political conditions and relations between rulers and their officeholders as well as according to varying local customs, it seems to have contained elements both of submission and of transfer.

Dukes and counts may normally have been appointed with some ceremony and oath-taking. In the kingdom of Germany it became customary to hand over a lance or standard as a symbol of office and of the land that went with it.<sup>35</sup> In the earlier Middle Ages bishops and abbots were often appointed by rulers and treated as officeholders, so that they took similar oaths of fidelity and were invested in a similar way, though more often, probably, with a ring and staff.<sup>36</sup> In the twelfth century Otto of Freising thought that kingdoms should be transferred by a sword, provinces by a *vexillum*.<sup>37</sup> This kind of symbolism may by then have been old. In the sixth century, according to Gregory of Tours, when King Guntram made his nephew Chilbert his heir he handed him a lance (*hasta*) as a sign (*indicium*) that he had transferred the whole kingdom to him.<sup>38</sup> When Duke Tassilo finally surrendered Bavaria to Charlemagne he handed him a staff with

<sup>33</sup> Above, n. 26.

<sup>34</sup> 'Symbolic ritual', 260, 276.

<sup>35</sup> Thietmar of Merseburg, *Chronicon*, ed. F. Kurze, M.G.H. *Scriptores rerum Germanicarum*, 54 (1889), 276, referring to a *hasta*. J. Bruckauf, *Fahnlehen und Fahnbelehnung im alten deutschen Reiche* (Leipzig, 1907), surveys the evidence.

<sup>36</sup> E.g. Notker's oath ('Symbolic ritual', 243, 266, 272), though no object is mentioned here; Eadmer, *Historia Novorum*, ed. M. Rule, R.S. 81 (1884), 186.

<sup>37</sup> Otto of Freising, *Gesta Friderici Imperatoris*, ed. G. Waitz, M.G.H. *Scriptores rerum Germanicarum*, 46 (1912), 106 (II.6).

<sup>38</sup> Gregory of Tours, *Libri Historiarum X*, M.G.H. *Scriptores rerum Merovingicarum*, 1 (1951), 313 (VII.33).

the figure (or head?) of a man at its top.<sup>39</sup> When duchies or counties passed out of royal control and became mere hereditary estates then the ceremonies seem often to have died away or been preserved or revived in the form of the homage required by the new law of fiefs. In England they were preserved only in the form of the homage that all tenants-in-chief owed.

Whether or not these suggestions are right, it was Le Goff's essay that stimulated me to think of the possible difference between an object held as a symbol of authority and an object transferred as a symbol of the transfer of rights. Even though I would distinguish different sorts of relationships and rituals that he sees as one, I quite agree that the links between them say something important about the society they belonged in. What Le Goff says in his essay about, for instance, the symbolic difference between kneeling and kissing on the one hand and prostrating oneself on the other is obviously important. I also think that the continuance of the general forms of the different rituals, or of elements within them, reflects a continuity of general values and norms from the ninth century (or earlier) right through to the late Middle Ages. In so far as rituals did not change when the relations they symbolized did, the connection between the two must be more problematic than Le Goff allows. But history needs both bold hypotheses and rigorous testing. Le Goff's hypothesis about the importance of body language stands up so far even if, under testing, its application needs amendment.

My conclusions, both to this paper and to the book to which it forms afterthoughts, must be tentative. What I have put forward are hypotheses that need testing. But however tentatively and provisionally, I suggest that medieval historians whose work includes anything to do with property law and with social and political relations among the free, might think about some of the points I have raised, above all about the need to try to avoid starting from wide, general, unexamined, inherited assumptions about the relations, values, and mentalities of medieval society,<sup>40</sup> and then fitting the evidence into them without distinguishing words, concepts or notions, and phenomena. That does not mean that I think

<sup>39</sup> '... et reddidit ei cum baculo ipsam patriam in cuius capite similitudo hominis erat...': *Annales Nazariani*, in W. Lendi, *Untersuchungen zur frühalemannischen Annalistik. Die Murbacher Annalen* (Freiburg, 1971), 163. Ganshof's statement (*Feudalism*, 40) that Charlemagne gave the *baculum* back with the duchy is based apparently only on an assumption that becoming a vassal entailed the grant of a benefice. The possible identity and character of the *baculum* are discussed by P. Stollenmayer, *Tassilo-Leuchter, Tassilo-Zepter* (Wels, 1959), and A. Gauert, 'Das Zepter Herzog Tassilos III', *Deutsches Archiv*, xviii (1962), 214–23. It is mentioned but not discussed in all the recent discussions of Tassilo's surrender I have seen: J. Jahn, *Ducatus Baiuvariorum: das bairische Herzogtum der Agilolfingen* (Stuttgart, 1991), 539; M. Becher, *Eid und Herrschaft: Untersuchen zum Herrscherethos Karls des Grossen* (Sigmaringen, 1993), 63; P. Depreux, 'Tassilon III et le roi des Francs: examen d'une vassalité controversée', *Revue historique*, 593 (1995), 67–8. Depreux, unlike the others, cites Odegaard, *Vassi*, 90 (and *Fiefs and Vassals*, 86, 98) but without apparently noticing what either of us was arguing about vassalage in general.

<sup>40</sup> Cf. S. Reynolds, 'Social mentalities and the case of medieval scepticism', *T.R.H.S.* 6th ser. i (1991), 20–41.

generalizations or conceptualizations or theories are unnecessary, as one reviewer, who apparently saw me as a typical British empiricist, may have thought I did.<sup>41</sup> If being an empiricist means looking for evidence, and checking the evidence that others cite, I am proud to be one. I want to conceptualize and generalize, but I want us to take our conceptualizations seriously, to make explicit propositions and test them rigorously, bearing in mind that testing a hypothesis involves looking for opposing evidence.

One thing I would like medieval historians to conceptualize more clearly and think about is the difference made to government by the development of professional bureaucratic government and professional or expert law. When did it happen, why, and by what stages in different areas? When I argue that the feudal law from which historians have derived their ideas of feudo-vassalic relations was produced by bureaucratic government and professional law, this does not mean that I think that social and economic change came from above (which two reviewers thought I did;<sup>42</sup> I must try to be more clear). The essence of my argument is that the appearance of new words and new rules which historians interpret as 'feudalization' did not constitute what can be called a social change. They were more like a symptom of political change that was an indirect result of social changes. I maintain that it was the great changes in society and economy between, say, the tenth and the thirteenth century that made possible the growth of bureaucracy and professional law that in turn produced the fiefs and vassalage of late medieval law from which historians have constructed their idea of feudal society and feudal ideas. But social and economic change were not the direct or only cause. Politics mattered too, as the very different rules about property in different kingdoms suggest. That statement may mean that I am a British empiricist after all: I believe in the significance of the despised *histoire événementielle*. The question I want studied is the connection between all these different sorts of change. How were the changes in government and law related to economic and demographic growth, to the rise of a market economy, to the growth of literacy and academic education? How were these all related to each other? What caused what?

I might add here something about my attitude to professional law. A long and interesting electronic review from Bryn Mawr mentioned my 'obvious dislike' of professional lawyers. Although I intended my discussion of the twelfth-century north Italian lawyers to show admiration for their intellectual zest and problem-solving, I can see why the book as a whole gave that impression. I probably overreacted against the traditional assumption of legal historians that lawyers' law is rational law—the only truly rational law—and that in the early Middle Ages, before the lawyers, the only way of solving disputes was by force or ritual

<sup>41</sup> O. G. Oexle, 'Die Abschaffung des Feudalismus ist gescheitert', *Frankfurter Allgemeine Zeitung*, 19 May 1995.

<sup>42</sup> Ibid.; J. Flori, in *Cahiers de civilisation médiévale*, xxxviii (1995), 68\*.



procedures which had more to do with peace-making than with finding out the truth.<sup>43</sup> Paradoxically, this way of looking at law, when combined with the assumption that the values and essence of feudo-vassalic relations were very old, actually makes it hard to appreciate just how creative and ingenious the professional lawyers and government servants of the later Middle Ages were. But I admit to a sentimental liking for the older forms of unprofessional, collective judgement which I ought to restrain.

The message of the book that in a way I most care about (but that no reviewer has mentioned) is the way to study property that I propose. I am sure that my checklist of rights and obligations could be improved, and, after five years of using it I do not need to be told that evidence of all the items on my list is often hard to find. Nevertheless, I still think that use of a checklist of some kind adds a useful precision to discussions of property. I think it could be useful in studies of the relations between landlords and peasants and the whole question of serfdom, villeinage, and so on, whether in Europe or elsewhere.

This brings me to the question of the relation between the kind of feudalism that is concerned with fiefs and vassals and the much bigger question of what one can roughly call Marxist feudalism. In my book I suggested briefly that they are separate. Are they? Outside our narrow world of medieval European history there is much argument about feudalism in other periods and other continents where Marxism is less dead than people in Europe and America seem to assume. Even in Marxist contexts arguments about whether there was true feudalism outside Europe often seem to involve deciding whether there were fiefs or vassals. If fiefs or vassals, in the sense they are traditionally understood, were not embedded in early medieval European society as foundations for late medieval government and law, how does that affect judgements on what is meant by feudalism in world history? Even within Europe, moreover, we need more comparisons across national historiographical traditions. These traditions are so different that the very words we use in our different languages carry a great deal of historiographical baggage that is very difficult to translate. To find what was really different and really similar one has to go back to the sources. In the case of feudo-vassalic relations the habit of assuming a general set of norms which is in fact based on evidence from different countries and centuries, and then of fitting the evidence from one's own country into it, has, I suggest, allowed us all to ignore anomalies for too long.

Finally, I repeat that I do not claim to have written anything definitive. I have only scratched the surface of the evidence for the areas I have studied. On every

<sup>43</sup> I put forward arguments against this view in *Kingdoms and Communities* (Oxford, 1984), 12–38. More arguments, with much more evidence, are in *The Settlement of Disputes in Early Medieval Europe*, ed. W. Davies and P. Fouracre (Cambridge, 1986). Two important recent contributions on different aspects are P. Fouracre, 'Carolingian justice: the rhetoric of improvement and the contexts of abuse', *Settimane*, xlii (1995), 771–803; S. D. White, 'Proposing the ordeal and avoiding it: strategy and power in western French litigation, 1050–1110', in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. T. N. Bisson (Philadelphia, PA, 1995), 89–123.